

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>N.A. BURKITT, INC.</b>	)	
	)	
<b>PLAINTIFF</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 00-36-P-H</b>
	)	
<b>CHAMPION ROAD MACHINERY</b>	)	
<b>INTERNATIONAL</b>	)	
<b>CORPORATION, ET AL.,</b>	)	
	)	
<b>DEFENDANTS</b>	)	

**ORDER ON PLAINTIFF’S MOTION FOR  
TEMPORARY RESTRAINING ORDER**

The only substantial issue on this motion is whether a dealership that sells motor driven graders, commonly used for snowplowing, snow removal, and road construction, is covered by Maine’s statute regulating “business practices between motor *vehicle* manufacturers, distributors and dealers,” 10 M.R.S.A. § 1171-86 (emphasis added). On this motion for temporary restraining order I conclude preliminarily that it is not.

Maine’s Motor Vehicle Dealer statute defines motor vehicle as “any motor driven vehicle, except motorcycles, required to be registered under Title 29-A, Chapter 5.” 10 M.R.S.A. § 1171(11). It is undisputed that the graders in question are “motor driven.” The term “vehicle” is not defined in Title 10.

Chapter 5 of Title 29-A does not contain its own definition of “vehicle,” but relies upon the definition in Chapter 1 of Title 29-A. It states that a vehicle is “a device for conveyance of persons or property on a way.” 29-A M.R.S.A. § 101(91). Graders do not seem to fit this definition. Unlike

cars, they are not “for conveyance of persons.” Unlike trucks, they are not “for conveyance . . . of property.” They do incidentally carry a driver as they fulfill their function of earthmoving or snowmoving, but that is not what they are “for.” Neither is the short distance movement of dirt or snow in front of the blade the “conveyance of property.”

Instead, graders are specifically included within the definition of “special mobile equipment.” That definition includes “a self-propelled *device* operated over the highways that is not designed or used primarily for the transportation of persons or property, including, but not limited to, . . . graders. . . .” 29-A M.R.S.A.

§101(70) (emphasis added). Until 1993, the language of this definitional section referred to a “self-propelled vehicle.”<sup>1</sup> In 1993, however, for unexplained reasons, the term “device” replaced the term “vehicle.” Thus, both vehicles and special mobile equipment are now part of the larger category of “device.” In turn, a “motor vehicle” is “a self-propelled vehicle,” 29-A M.R.S.A. § 101(42), whereas special mobile equipment is “a self-propelled device.”

The plaintiff argues that Title 29-A’s registration requirement appears only in section 351(1), making it a Class E crime to “fail to register a vehicle that is operated or remains on a public way.” Since section 351(1) refers only to a “vehicle,” the plaintiff argues that anything for which registration is provided must *ipso facto* be a vehicle. But Maine’s registration statute is less than clear on this point. It also appears that things that are self-propelled devices rather than vehicles must be registered under other provisions of the statute. For example, section 513(2)(A) requires an annual registration for Class A special mobile equipment (equipment that makes frequent

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<sup>1</sup> The Uniform Laws continue to use the term “vehicle.” See Unif. Motor Vehicle Certification of Title and Anti-Theft Act § 1(l).

movement over public ways). For Class B special mobile equipment, a registrant may register under section 513 or obtain a special registration permit either under section 501(10) (for limited highway operation) or under section 2382(5) (for overlimit vehicle movement). It is true that because graders—or other special mobile equipment—are not vehicles, the failure to register them would not be a Class E crime under section 351(1). Nevertheless, it would be a traffic infraction under section 104, which calls it an infraction to fail to comply with any provision of Title 29-A.

Perhaps this messy question ultimately deserves to be certified to the Law Court for final interpretation of the statute, for there are other troubling issues. For example, why does the sales and use tax statute still use the old definition, by which all special mobile equipment is categorized as a “vehicle”? See 36 M.R.S.A. § 1752(14-B).<sup>2</sup> But I conclude at this point that the plaintiff cannot satisfy the likelihood of success standard in order to obtain a temporary restraining order. See Lanier Professional Servs., Inc. v. Ricci, 192 F.3d 1, 3 (1st Cir. 1999). The motion for temporary restraining order is **DENIED** for lack of likelihood of success on the merits.

**SO ORDERED.**

**DATED THIS 16TH DAY OF FEBRUARY, 2000.**

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**D. BROCK HORNBY**  
**UNITED STATES CHIEF DISTRICT JUDGE**

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<sup>2</sup> One might also wonder why special mobile equipment, which includes graders, is listed under the heading “exempted *vehicles*” (emphasis added) for purposes of creating an exception from title certification. See 29-A M.R.S.A. § 652(11). And did the Legislature intend to exempt special mobile equipment owners from the financial responsibility laws? See 29-A M.R.S.A. § 1601 (applying only to a “vehicle”).